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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 999

PEGGY J. CONNOR, et al.,
Appellants,

vs.

PAUL B. JOHNSON, JR., Governor of Mississippi, et al.,
Appellees.

MOTION TO DISMISS OR AFFIRM

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vs.

PAUL B. JOHNSON, JR., Governor of Mississippi, et al.,
Appellees.

MOTION TO DISMISS OR AFFIRM

Appellees move the Court, under Supreme Court Rule 16, to dismiss the appeal for failure of appellants: (1) to invoke proper basis for jurisdiction and (2) to file the complete record herein in docketing this case as required by Supreme Court Rule 13. In the alternative, appellees move the Court to affirm the First Final Judgment of the District Court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument: (1) because the claim for racially segregated districts is ob-

viously without merit and (2) because its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject.

It is, therefore, respectfully moved that this appeal be dismissed and, in the alternative, that the judgment of the District Court on the claim of invalidity of the congressional districting statute of Mississippi be affirmed.

Respectfully moved this the 21st day of February, 1967.

Paul B. Johnson, et al.,
Defendants
JOE T. PATTERSON,
Attorney General

By .....

MARTIN R. McLENDON,
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BRIEF IN SUPPORT OF MOTION TO DISMISS

Review of the sources of the Court's jurisdiction is a threshold inquiry appropriate to the disposition of every case that comes before it. *Brown Shoe Co.* v. *U. S.*, (1962) 370 U.S. 294, 8 L. Ed 2d 510, 82 S. Ct. 1502. Appellants' jurisdictional statement consists almost entirely of an oblique assault upon the findings of fact by the District Court notwithstanding the fact that they failed in their duty to file the entire record upon the docketing of the case.

JURISDICTION

The original complaint invoked certain statutes as the basis for the jurisdiction of the District Court. The Constitution of the United States was also invoked ". . . particularly Art. IV, Sec. 4, the Fourteenth Article of Amendment thereto and the Fifteenth Article of Amendment thereto." Art. I, Sec. 2 of the U. S. Constitution providing that representatives to Congress shall be elected by the people, and the basis upon which this Court has held that it was authorized to inquire into the districting statutes providing for the election of members of a coordinate branch of the government, was not invoked in the lower court and has not been sought to be invoked here. See *Wesberry* v. *Sanders*, (1964) 376 U.S. 1, 11 L. Ed. 2d 481, 84 S. Ct. 526; *Wright* v. *Rockefeller*, (1964) 376 U.S. 52, 11 L. Ed. 2d 512, 84 S. Ct. 603; and *Priesler* v. *Secretary of State of Missouri*, (1966) 257 F. Supp. 953, Aff. (1967) 87 S. Ct. 613.

RECORD FILED BY APPELLANTS IS NOT COMPLETE

The case was tried by a statutory Three-Judge District Court without a jury on complaint, amendment to complaint, answer, and answer to amendment on July 15, 1966. Post-trial depositions were authorized and briefs were ordered to be filed. Findings of fact and conclusions of law and a final judgment based thereon, pursuant to Civil Rule 54(b), were filed on September 30, 1966 (App. Br. 25-38). Notice of appeal designating all of the record, exclusive of briefs of counsel, was filed by appellants on October 28, 1966. No cross-designation was filed by appellees because the designation of "all of the record" filed by appellants left nothing further to be designated. On motion the Dis-

trict Court extended the time for perfecting the appeal to and including January 23, 1967.

The record certified by the District Court to this Court did not include a transcript of the testimony and proceedings of the trial for the reasons set forth in the affidavit of the official court reporter and certificate of the Clerk hereto attached as Appendix A, the original of which is on file with the Clerk of this Court.

Supreme Court Rule 13 makes it the mandatory duty of the appellants to docket the case and file the complete record. Material portions of the record consisting of the testimony of witnesses and the trial proceedings have not been filed as required by that rule even though all the record was designated and should have been filed according to the Notice of Appeal. See Rule 75, Fed. Rules Civ. Proc., for requirements concerning record on appeals to Courts of Appeal.

The cause was docketed without a complete record and for the reason that parts of the record are now in possession of this Court and part in possession of the District Court, appellees have not filed a motion to dismiss under Supreme Court Rule 14(2) in the District Court; but instead appellees move this Court to dismiss the appeal under Supreme Court Rule 14(3) for failure of appellants to file the complete record herein as they were required to do so by Supreme Court Rule 13. "This Court has often refused to decide constitutional questions on an inadequate record." *Ellis* v. *Dixon*, 349 U.S. 458, 464, 99 L. Ed. 1231, 75 S. Ct. 850.

Even if appellants had filed the complete record in this case, or are permitted to do by the Court, the judgment of the District Court should be affirmed without further argument.

BRIEF IN SUPPORT OF MOTION TO AFFIRM

The District Court found as a matter of fact that appellants had failed to sustain their attack on the validity of the congressional districting statute adopted by the Mississippi Legislature and concluded as a matter of law that by reason of such failure that portion of the complaint should be finally dismissed as provided by *Civil Rule 54(b)*.[1]

STATUTE INVOLVED

House Bill 911, Miss. Laws of 1966, was introduced as a new bill in the House on April 6, 1966, referred to the committee as a whole, passed by the House, and referred to the Senate. In the Senate, the bill was amended in its entirety, passed by the Senate and returned to the House. The House concurred in the Senate amendments and the bill was approved by the Lieutenant and Acting Governor on April 7, 1966. House and Senate Journals. The deadline for qualifying for the primaries was April 7, 1966, which was sixty days before the primary election, *§3120, Miss. Code of 1942, Recp.*, which was held on the first Tuesday of June, June 7, 1966, *§3111, Miss. Code of 1942, Recp.* A copy of the bill as thus approved is attached hereto as Appendix B.[2]

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1. The emphasized citation was inadvertently omitted from the copy of the judgment appearing on page 26 of Appellants' Brief.

2. Subsequent to the entry of the judgment approving the congressional districting statute the five congressmen allotted to Mississippi have been elected from the districts as thus approved; from Districts 1 and 2 they were elected over incumbent State senators and from District 4 an incumbent State senator was elected over an incumbent State representative (Stipulation); and the congressmen are now serving in the 90th Congress.

Connor v. *Johnson*, (1966) 256 F. Supp. 962, held that the State Constitution and statutes apportioning the State Senate and House of Representatives were invalid. The Legislature was

THE FACTS

Appellants state their version of the facts at length in the jurisdictional statement. Some of those facts are supported by the documentary evidence before the Court, some find their support in the trial proceedings not before the Court and some can find support in the imagination of appellants' counsel only. Because of the incompleteness of the record, ferreting out fact from fancy at this time is not possible. Suffice it to say, the trial court extended to appellants every opportunity to prove their case as alleged to the point of admitting all evidence offered (Op. of D.C., Fn. 1, App. Br., p. 31) and the District Court observed and listened patiently to all witnesses. It is significant that the District Court considered all evidence and arguments advanced on behalf of appellants and concluded that they had failed in their burden of proof on the crucial issue of the case of alleged racial gerrymandering.

One additional fact worthy of note at this time is that the population of each county in Mississippi is composed of substantial numbers of both white and non-white (U. S. Census Bureau designation) population (Stip. Exh. 1), and that no county was divided for congressional redistricting purposes (Appendix B).

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convened in Extraordinary Session to reapportion according to the Court's Opinion, and the validity of that apportionment was being tried on the date this Court rendered its decision in *Swann v. Adams*, (1967) 17 L. Ed. 2d 501, 87 S. Ct. 569, and has been under advisement since that time. A decision of the Court is expected in the near future.

ARGUMENT

Findings of Fact Shall Not Be Set Aside Unless Clearly Erroneous, and Due Regard Shall Be Given the Opportunity of the Trial Court to Judge the Credibility of the Witnesses.

Appellants' argument from beginning to end is based upon the false premise that the congressional districting statute here under attack was adopted with the deliberate purpose of discriminating against the Negro population of the State. This point was designated Point (4) of plaintiffs' contentions by the District Court (App. Br., p. 32) and disposed of by the Court:

> "As to Point 4, we find that plaintiffs wholly failed their burden of proof. They proved that there were newspaper reports as to what a few legislators 'thought' or said, but the solemn acts of the Congress or of State legislatures may not be impeached or invalidated on nothing more than newspaper reports. Cf. Wright v. Rockefeller, supra." (App. Br., pp. 35 and 36)

State statutes are presumed to be valid and the party seeking a declaration of invalidity has the burden of proving that the act is arbitrary. *McGowan* v. *Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101; *New York* v. *O'Neill*, 359 U.S. 1, 3 L. Ed. 2d 585, 79 S. Ct. 564; *Morey* v. *Doud*, 354 U.S. 457, 1 L. Ed. 2d 1485, 77 S. Ct. 1344.

The issues of alleged racial gerrymandering and alleged improper motives were squarely before the District Court by allegations and denials and were resolved against appellants by extensive findings of fact. Rule 52(a), Fed. Rules Civ. Proc., provides that this Court is not to retry the case but to determine only whether the findings of fact

pass muster under the clearly erroneous concept set forth therein.

In their oblique attack upon the findings of fact of the District Court appellants imply that those findings are erroneous because the District Court did not accept in toto appellants' version of the case. A study of such of the record as is presently before the Court, the findings of fact and conclusions of law, and the undisputed facts as shown by the record, show that the District Court was eminently correct in its finding that appellants failed wholly to establish their right to the relief sought or any relief whatsoever based upon the proof submitted.

Appellants' attack necessarily asks this Court to accept their version of the facts as alleged, and not proven, and to in effect ignore the District Court's findings and try the case de novo. Extensive citation of authority is not necessary to point out the fallacy of appellants' argument that they did not dignify with a direct presentation. Appellants' arguments, largely speculative, are in total disregard of the evidence found in the record as set forth in the District Court's findings of fact.

This Court has dealt with an approach similar to appellants' in this case before. *U. S.* v. *Yellow Cab Co.*, 338 U.S. 338, 94 L. Ed. 150, 70 S. Ct. 177, held that Rule 52(a), *supra*, applied with equal force to the government as to private litigants and that this Court does not try appeal cases de novo. *Wright* v. *Rockefeller, supra*, affirmed the findings of a divided District Court wherein the attack was upon alleged racially segregated districts as opposed to completely integrated districts as is the case at bar. In so doing, this Court said:

> "We accept the findings of the majority of the District Court that appellants failed to prove that the New

York Legislature was either motivated by racial considerations or in fact drew the districts on racial lines. . . .

"Where there are such conflicting inferences one group of them cannot, because labeled as 'prima facie proof', be treated as conclusive on the fact finder so as to deprive him of his responsibility to choose among disputed inferences. And this is true whether the conflicting inferences are drawn from evidence offered by the plaintiff or by the defendant or by both."

The District Court held that *Gomillion* v. *Lightfoot*, (1960) 364 U.S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125, relied upon so heavily by appellants herein, was ". . . simply not apposite" (D.C. Op., p. 10),[3] as did this Court in *Wright* v. *Rockefeller, supra.* The difference in Gomillion, this case and Wright is that in the former, Negroes were alleged to have been excluded from municipal boundaries, which this Court found if proven would be discriminatory, whereas in the latter two cases they were included. Another distinguishing feature is that in Gomillion, no trial was had and no facts were developed other than those set forth in the complaint, because the case was reviewed in this Court following the sustaining of a motion to dismiss for failure to state a claim by the District Court. This latter distinguishing feature applies to many of the other cases relied upon by appellants.

Documents Do Not Show Discrimination

By Appendices G and H and Exhibits 2 and 13, appellants seek to show that "the Delta" region of Mississippi actually exists. The existence of that geographic area is not denied. However, the argument that "the Delta" has

3. Appellants' copy of the Opinion (App. Br., p. 36) improperly quotes the District Court Opinion by the use of the word "opposite" instead of "apposite" as used by the District Court.

not heretofore been divided in the political life of Mississippi is denied because it is not true. The newspaper exhibits referred to a division of "the Delta" for congressional districting purposes as though such division was a new idea. This vividly illustrates the fallacy of using newspaper reports as facts.

The geographic area known as "the Delta" has been divided almost equally since 1892, for the purpose of the election of all of the judges of the State Supreme Court, *§1941, Miss. Code of 1942, Recp.* See stipulation exhibit 3. This same division of the State is used for the purpose of electing the State's highest administrative officers who are elected from less than the State-at-large. The State Highway Commissioners are elected from Supreme Court districts under the provisions of *§8014, Miss. Code of 1942, Recp.* The members of the Public Service Commission are elected from Supreme Court districts under *§7688, Miss. Code of 1942, Recp.* Specific sections of the Miss. Code of 1942, Recp., require that at least one member of no less than fourteen appointive administration agencies of the State must be a resident of each of the Supreme Court districts.[4]

The evaluation of congressional districting of the State was treated extensively by the District Court and refutes the obviously repetitious series of maps of the congressional districts of the State. Appellants' maps showing what might have been done in districting is contrary to

4. Aeronautics Commission—§7536-02; Board of Bar Admissions—§8647; Board of Cosmetology—§8915-01; Board of Trustees of State Eleemosynary Institutions—§6921; State Game and Fish Commission—§5841; Commission on Hospital Care—§7146-01; State Hospital Commission—§7130; Board of Trustees of Institutions of Higher Learning—§6720; Junior College Commission—§6475-21; Board of Trustees of Mental Institutions—§6946-02; State Oil and Gas Board—§6132-02; Mississippi Penitentiary Board—§7924; Mississippi Real Estate Commission—§8920-03; and State Board of Public Welfare—§7218.

prior decisions of the Court that have held that Courts do not substitute their judgment for the judgment of the Legislature.

"As repeatedly observed, we do not sit as a revisory board to substitute our judgment for that of the Legislature . . . as to matters within its province." *Northern Pacific Railroad Company* v. *North Dakota*, 236 U.S. 585, 59 L. Ed. 735, 35 S. Ct. 429.

". . . it is not the province of a Court to hear and examine evidence for the purpose of deciding again a question which the Legislature has already decided. Its function is only to determine whether it is possible to see that the legislative decision is without rational basis." *Clark* v. *Paul Gray*, 306 U.S. 583, 83 L. Ed. 1001, 59 S. Ct. 744.

". . . the Courts are not authorized to substitute their views for those of the Legislature. We can only consider the legislation that has been had and determine whether or not its necessary operation results in an unjust discrimination between the parties charged with its burdens." *Travelers Insurance Company* v. *Connecticut*, 185 U.S. 364, 46 L. Ed. 949, 22 S. Ct. 673.

No Racial Discrimination Has Been Shown

Appellants' main argument in this Court is based upon the premise of alleged racial discrimination in the failure of the Legislature to create one or more districts with larger non-white populations. Appellants are seeking to have this Court enforce the particular kind of segregation that appeals to them. Compare *Wright* v. *Rockefeller*, *supra*. In doing so, they argue that the "necessary" and "inevitable" effect of the districting statute as it now exists is to bring about racial discrimination by diluting the vote of a significant segment of the population. This argument is wholly without factual proof for its support, was re-

solved against appellants by the District Court, and can only be based upon speculations of appellants' counsel which this Court held do not supply evidence in *Burns* v. *Richardson*, (1966) 384 U.S. 73, 16 L. Ed. 2d 376, 86 S. Ct. 1286, by stating:

> "Speculations do not supply evidence that multi-member districting was designed to have or had the invidious effect necessary to a judgment of the unconstitutionality of the district."

The argument concerning alleged necessary and inevitable effect, being without foundation in fact and wholly without proof to support it, cannot be considered anything other than a hypothetical and abstract argument. "Constitutional questions are not to be decided hypothetically." *Anniston Manufacturing Company* v. *Davis*, 301 U.S. 337, 81 L. Ed. 1143, 57 S. Ct. 816.

"The Courts deal with concrete legal issues, presented in actual cases, not abstractions." *U. S.* v. *Appalachian Electric Power Company*, 311 U.S. 377, 85 L. Ed. 243, 61 S. Ct. 291.

Courts cannot deal in or adjudicate abstractions. *Portland Cement Company* v. *Minnesota*, 358 U.S. 450, 4 L. Ed. 2d 421, 79 S. Ct. 357; and *Central Greyhound Line, Inc.* v. *Mealey*, 334 U.S. 653, 92 L. Ed. 1633, 68 S. Ct. 1260.

Slight implication and vague conjecture are not sufficient to authorize the Court to declare a legislative act invalid. *Fleming* v. *Nester*, 363 U.S. 603, 4 L. Ed. 2d 1435, 80 S. Ct. 1367.

Although this Court stands ready to correct violations of constitutional rights, the burden of showing the essential unfairness violative of such rights must be sustained by one who claims such injustice and seeks to have the

result set aside, and it must be sustained not as a matter of speculation but as a demonstrable reality. *Beck v. Washington*, 369 U.S. 541, 8 L. Ed. 2d 98, 82 S. Ct. 955; *U. S.* v. *Hardy*, 351 U.S. 454, 100 L. Ed. 1331, 76 S. Ct. 965.

The population of each of the counties in Mississippi is both white and non-white, Stip. Exh. 1. The districting statute divided the State along county lines and no county was divided for the purpose of putting parts of it in different districts. The percentages of white and non-white citizens in congressional districts compared with state-wide percentages is as follows:

	White	Non-White
District 1	48.64%	51.36%
District 2	56.86%	43.14%
District 3	54.54%	45.46%
District 4	51.91%	48.09%
District 5	76.19%	23.81%
State-wide	57.73%	42.27%

In districts 1 through 4 the percentage of non-white population per district exceeds the percentage of non-white population state-wide. In one district, the First, the non-white population is greater than the white population. The Fifth District, which has not changed, is the only district where the non-white population does not exceed the state-wide non-white population. As the District Court found:

> "This District is surrounded on three sides by the Alabama boundary, the Gulf of Mexico, and the Louisiana boundary, leaving very little maneuvering room in which to meet the norm with perfect mathematical exactness."

The necessary and inevitable effect of this Court adjudicating that the present congressional districting statute is unconstitutional would be to bring into opera-

tion the provisions of §3306, *Miss. Code of 1942, Recp.*, which requires that in the absence of a valid redistricting statute the congressman shall be elected from the state-at-large. This would have the necessary and inevitable effect of reducing the percentages of non-whites in four of the five districts as they are presently constituted to the state-wide percentages as shown above.

Appellants Seek Preference Not Equality

The proof and argument in the District Court was that one or more districts should have been created with a substantial non-white majority so that, as the District Court found:

> "The chief witness for the Plaintiffs was the Secretary of the Mississippi Freedom Democratic Party. His testimony was to the effect that the Plaintiffs feel that they are entitled to have at least one Congressional District of sufficient preponderance in Negro population to ensure the election of a Negro Representative from Mississippi."

Appellants by this argument seek a segregated congressional district in favor of the non-white population. That approach is sought to be veiled in this Court under the cry of alleged racial discrimination, innuendo, unproven statements of intent and syllogistic argument while the record of what that and other witnesses said has not been brought before this Court for review.

The right to vote is open to all citizens that would exercise that right. No showing whatsoever was made of the denial of the right to vote to appellants or anyone else.

On June 6, 1966, the Court of Appeals for the Fifth Circuit, in *Mississippi Freedom Democratic Party* v. *Democratic Party of Mississippi*, 362 F. 2d 60, speaking through Judge Wisdom, said:

"The legislature, in extraordinary session, repealed statutory provisions and initiated the repeal of constitutional provisions requiring, among other things, a constitutional interpretation test, a complex application form (which some Registrars insisted be executed perfectly), the good moral character test, and the publication of the names of applicants in the newspaper. See 1965 Amendments to Mississippi Constitution. §244, §241 (a) and revisions of Mississippi Code §§3309.6 et seq. The legislature substituted therefor the requirement that applicants for registration be able to read and write, §3209.7, and that they complete a six-question application and take a prescribed statutory oath. The legislature further required that all voters be able to read and write (§3235) and repealed a statute providing for assistance at the polls to illiterate voters, §3212.7."

"The voters of Mississippi ratified the necessary constitutional changes on August 17, 1965. As a matter of fact even prior to this ratification by the voters, the Attorney General of Mississippi, on July 7, 1965, advised the registrars of the respective Mississippi counties that in his opinion the new form prescribed by the legislature was in effect and could be used immediately. By August 1, 1965, the majority of registrars had begun to do so."

Affidavits from each of the election registrars of the State were admitted into evidence. Furthermore, the right to vote has been insured by an act of Congress. Weighted voting in favor of any group because of their residence has been declared to be constitutionally invalid. *Wesberry* v. *Sanders, supra.*

The District Court rejected appellants' plea for a district so arranged as to ensure the election of two Negro members of Congress by stating ". . . we have only to point to the unanswerable logic of what Mr. Justice Douglas

said (dissenting opinion) on this subject in *Wright* v. *Rockefeller*, . . ." (App. Br., p. 35)

Equality of the right to vote and participate in congressional elections is completely and adequately protected and that is not an issue in this case. Appellants seek inequality in their favor and a segregated district that could not be created without dividing counties and municipalities, along lines tortuously drawn to segregate neighborhoods. The Equal Protection Clause of the Constitution does not require that this be done. In fact, the opposite is true and if this were sought to be done to segregate the races, it would be subject to serious constitutional question.

Improper Intent, Motive and Purpose Not to Be Imputed to Legislative Body

Having failed wholly to sustain their allegations of improper motive, intent and purpose in the adopting of the congressional redistricting statute, appellants come here, without the record of what they did prove, and ask this Court to supply the proof by conjecture which they failed to sustain at the trial. They ask this Court to supply by judicial fiat that which they did not prove and to impute an improper motive to the entire membership of the Legislature of Mississippi.

Mr. Justice Brewer, speaking for the Court in *Florida C & P Railroad Company* v. *Reynolds*, 183 U.S. 471, 46 L. Ed. 283, said:

> "We must assume that the legislature acts according to its judgment for the best interest of the State, *a wrong intent cannot be imputed to it.*" (Emphasis supplied)

In rejecting an argument that Congress was motivated by a punitive purpose, the Court in *Flemming* v. *Nester, supra,* said:

> "We observe initially that only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. 'I[t] is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void.' Fletcher v. Peck, (U.S.) 6 Cranch. 87, 128, 3 L. Ed. 162, 175."

See also *11 Am. Jur. 818 and 819, Constitutional Law,* §*141;* and *16 C.J.S. 175, et seq.—Constitutional Law,* §*154.*

The language of the District Court for the Southern District of Alabama that approved a congressional districting statute of that state with population variations in excess of those here under consideration is, appellees submit, appropriate here. Before concluding plaintiffs had failed to show that the Alabama statute was constitutionally invalid, that Court said:

> "We have given full and careful consideration to all of the contentions of the plaintiffs, but it does not seem inappropriate to mention the long established rule that legislative acts should not be declared unconstitutional except for clear and cogent reasons. Early in the judicial history of this country, Mr. Chief Justice Marshall stated the rule to be:

'On more than one occasion, this Court has expressed the cautious circumspection with which it approaches the consideration of such questions; and has declared, that, in no doubtful case, would it pronounce a legislative act to be contrary to the Constitution.'

"Dartmouth College v. Woodward, 4 Wheat. 518, 625, 4 L. Ed. 629, 656 (1819). See also Fairbank v. United States, 181 U.S. 283, 21 S. Ct. 648, 45 L. Ed. 862 (1901); Walton v. House of Representatives, 265 U.S. 487, 44 S. Ct. 628, 68 L. Ed. 1115 (1925); United States v. Carolene Products Company, 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938); Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1943); Willoughby, The Constitutional Law of the U. S. (2nd ed.) V. I. §27, p. 46." *Moore* v. *Moore*, 246 F. Supp. 578.

CONCLUSION

The District Court found as a fact that appellants had failed to prove their case as alleged. This finding is amply supported by the lack of evidence and is emphasized by appellants' failure to bring the record made by them in the District Court here for review by this Court. The District Court was of the unanimous view that this case was controlled by *Wesberry* v. *Sanders*, *supra*, and *Wright* v. *Rockefeller*, *supra*.

Appellees submit that the appeal from the judgment of the District Court sustaining the validity of Mississippi's congressional redistricting statute should be dismissed or, in the alternative, that judgment and the opinion upon which it is based should be affirmed without further briefing or argument.

Respectfully submitted this the 21st day of February, A.D., 1967.

Paul B. Johnson, et al.,
Appellees
JOE T. PATTERSON,
Attorney General

By .....
MARTIN R. McLENDON,
Assistant Attorney General,
Attorney for Appellees
P. O. Box 220
Jackson, Mississippi

CERTIFICATE

I, MARTIN R. McLENDON, a member of the Bar of this Court, Attorney of Record for Appellees herein, do hereby certify that I have served copies of the foregoing Motion and Brief on Appellants by depositing a copy of same in a United States Post Office, first class postage prepaid, addressed to the following listed Attorneys for Appellants:

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Morton I. Stavis, Esq.
744 Broad Street
Newark, New Jersey

This the 21st day of February, 1967.

.....

MARTIN R. McLENDON

APPENDIX A

Affidavit

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the above and foregoing jurisdiction, William A. Davis, who, being by me first duly sworn, stated on his oath as follows, to-wit:

(1) That he is one of the official court reporters for the U. S. District Court for the Southern District of Mississippi duly appointed, qualified and acting as such under 28 U.S.C.A., §753, prior to July 15, 1966; and on that date, July 15, 1966, he was the official court reporter in attendance at the session of the statutory Three-Judge Court empaneled to hear a case styled *Peggy J. Connor, et al.* v. *Paul B. Johnson, et al.*, Civil Action No. 3830, then pending in that Court; and that he as such official court reporter did record verbatim by shorthand all proceedings, including testimony of witnesses, had in open court concerning that case on that date.

(2) Since that time neither the plaintiffs nor anyone for them have ordered, requested or notified affiant in any way whatsoever to transcribe the proceedings of the trial of the case of *Connor, et al.* v. *Johnson, et al.*, Civil Action No. 3830, held on July 15, 1966; the notes were not transcribed prior to the rendition of the Court's opinion and the entry of the First Final Judgment because of the press of other Court business. The proceedings of the trial have never been transcribed by this reporter or any other

court reporter; and as a consequence thereof, no transcript of the proceedings has been filed for the records of the Clerk of the District Court.

WITNESS MY HAND this the 8th day of February, 1967.

/s/ William F. Davis
Official Court Reporter
U. S. District Court, Southern
District of Mississippi

SWORN TO AND SUBSCRIBED BEFORE ME this the 8th day of February, 1967.

My Commission Expires January 13, 1971.

/s/ Sue K. Richmond
Notary Public

CERTIFICATE

I, ROBERT C. THOMAS, Clerk of the U. S. District Court for the Southern District of Mississippi, do hereby certify that no transcript of the trial proceedings in the case styled *Connor, et al.* v. *Johnson, et al.*, Civil Action No. 3830, has been filed in this Court and as a consequence thereof, no transcript of the trial proceedings was included in the record transmitted from this office to the office of the Clerk of the United States Supreme Court, Washington, D. C.

WITNESS MY SIGNATURE this the 8th day of February, 1967.

Robert C. Thomas
Clerk
By /s/ E. Mathison
Deputy Clerk

(Seal)

APPENDIX B

House Bill No. 911

AN ACT to amend section 3305, Mississippi Code of 1942, Recompiled, as amended, to apportion and redistrict the congressional districts of the State of Mississippi.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 3305, Mississippi Code of 1942, Recompiled, as amended, is amended to read as follows:

3305. The State of Mississippi is hereby divided into five (5) Congressional districts as follows:

First District. The First Congressional District shall be composed of the following counties: Bolivar, Washington, Sunflower, Leflore, Carroll, Montgomery, Attala, Choctaw, Webster, Calhoun, Chickasaw, Clay, Oktibbeha, Lowndes and Monroe.

Second District. The Second Congressional District shall be composed of the following counties: DeSoto, Tunica, Tate, Panola, Quitman, Coahoma, Tallahatchie, Grenada, Yalobusha, Lafayette, Marshall, Benton, Tippah, Union, Pontotoc, Lee, Itawamba, Prentiss, Tishomingo and Alcorn.

Third District. The Third Congressional District shall be composed of the following counties: Warren, Hinds, Claiborne, Copiah, Jefferson, Lincoln, Franklin, Adams, Wilkinson, Amite, Pike and Walthall.

Fourth District. The Fourth Congressional District shall be composed of the following counties: Issaquena, Sharkey, Humphreys, Holmes, Yazoo, Madison, Rankin, Simpson, Leake, Scott, Smith, Jasper, Newton, Neshoba, Winston, Noxubee, Kemper, Lauderdale and Clarke.

Fifth District. The Fifth Congressional District shall be composed of the following counties: Lawrence, Jefferson Davis, Covington, Jones, Wayne, Greene, Perry, Harrison, Hancock, Forrest, Lamar, Marion, Pearl River, Stone, George and Jackson.

Section 2. The present number of Congressmen in the United States House of Representatives from this State shall continue to serve and represent their respective existing districts until the expiration of the terms for which they were elected. At the general election to be held on the first Tuesday after the first Monday in November, A.D., 1966, there shall be elected one (1) Congressman from each of the five (5) Congressional districts created by the preceding section.

Section 3. In the event a vacancy occurs in either of the five (5) existing Congressional districts by reason of death, resignation or otherwise from the effective date of this act and the expiration of the terms of the present Congressmen, such vacancy shall be filled as provided by existing laws as if this act had not been passed.

Section 4. This act shall take effect and be in force from and after its passage.

Approved: April 7, 1966.